


## **Hungary, Fővárosi Ítéltábla Mellett Másodfokú Szolgálati Bíróság (First Instance Service Court attached to the Budapest-Capital Regional Court of Appeal), SZF1/46/2011 - Ravasz case, ordinary, 23 January 2012**

### Member State

 Hungary

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### Topic

independence, accountability, impartiality, freedom of expression

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### Sector

Freedom of Expression and Association

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### Deciding Court Original Language

Fővárosi Ítéltábla Mellett Másodfokú Szolgálati Bíróság

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### Deciding Court English translation

First Instance Service Court attached to the Budapest-Capital Regional Court of Appeal

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### Registration N

SZF1/46/2011

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### Date Decision

23 January 2012

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### Subject Matter

freedom of expression of judges – prohibition of making public statements on court cases – obligation to refrain from undermining confidence in the judiciary and the authority of courts – prohibition of political activity – disciplinary measures

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### Legal issue(s)

The decision addressed different aspects of judges' freedom of expression.

The decision was based on the differentiation between views on concrete judicial cases and those on general issues related to the judiciary.

It interpreted whether the ban on publicly commenting and releasing information to the press about specific court cases covers making comments on a case in which the judge was involved as one of the parties.

It also addressed the problem of whether the judges' statements in the media that harshly criticized the judiciary could undermine trust in judicial proceedings and the authority of courts and violate the prohibition on political activities.

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#### Request for expedited/PPU procedures

NO

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#### National Law Sources

Article 22(1), Article 28(1) and (2) and Article 29 (1) of Act LXVII of 1997 on the Legal Status and Remuneration of Judges

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#### Facts of the case

In 2011, Mr. László Ravasz, being a judge for 24 years, published several articles and gave more interviews in the media.

He stated that the judiciary was in a crisis that undermined the rule of law, and the organization was under political influence. Judicial independence was not ensured, and the judiciary was exposed to unlawful pressure also on how particular cases were decided. According to him, the problems were rooted primarily in the 1997 system of court administration.

He criticized the judges at high courts, stating that they lacked professional competence and represented an attitude shaped by the pre-1989 socialist regime. According to him, the hierarchy put pressure on lower instance courts and junior judges.

In this context, he analyzed the alleged judicial errors of two cases involving him as a plaintiff.

In a post, he expressed his criticism about an open letter signed by court executives, including the President of the Supreme Court, protesting against the forced early retirement of a large number of judges. In support of the planned measure, he argued that it targeted the top tier of the judiciary and was unfavourable only to judges appointed during the previous regime. He called for the removal of the "old", "socialist" judges from administrative offices and some from the judiciary too. Besides the above, he lodged complaints with court executives about similar concerns, which were dismissed without an examination.

In the following months, the judge was subject to disciplinary proceedings because of his publications and media appearances.

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#### Reasoning (role of the Charter or other EU, ECHR related legal basis)

The service court noted, in the first place, that in 2012, new laws entered into force regarding the status of judges. The relevant provisions of the new law were almost identical to the previous rules, both in content and wording, so the legal changes did not affect the assessment of the judge's conduct. Then, the service court relied on the pre-2012 rules to decide if the judge had committed any disciplinary offence. The court examined the alleged breaches of judicial obligations one by one. 1. MAKING STATEMENTS ON COURT CASES: The relevant law on making statements by judges says that judges shall not express their opinion on pending or already resolved cases in public outside their judicial capacity, particularly on cases heard by them. Furthermore, it states that information to the press on pending and resolved cases can be given by court presidents or the persons authorized by them. The service court set out that even though there is a special emphasis on those cases that are heard by the judge herself, the above rules also apply to cases in which a judge was a party to the case. It argued that the judge published his opinion on individual cases in which he was the plaintiff, and his comments were one-sided and critical about the judgments, finding them unreasonable. As a result, his conduct was a

manifest and clear breach of the statutory limitations on making public statements by judges. The service court added that the prohibition on public statements applies only to specific cases and organizational issues, so judges are not per se prevented from expressing their opinion on the judiciary in general, judicial reforms or laws in force. So, the problems of his further publications lie not in their topic but in their content.

**2. REFRAINING FROM UNDERMINING CONFIDENCE IN JUDICIAL PROCEEDINGS AND THE AUTHORITY OF COURTS:** The service court argued that the judge made grossly biased and generalizing, manifestly unfounded statements regarding the judicial organization, which were also undeserving in their tone. The publications were made in front of a large public and lacked a minimum of solidarity for the organization. They provided a picture of the judiciary as it does not seek to carry out its constitutional mandate, most of the administrative officials are politically biased, and career advancement depends on fulfilling the expectations of senior court officials who exert undue influence on judges. So, the harsh criticism targeted a clearly identifiable group of judges. Furthermore, the negative statements, repeated multiple times by the judge in his writings, gave the impression that a large number of judges failed to act in accordance with the law; moreover, they committed criminal offences. At the disciplinary hearing, the judge argued that (a) he exercised only his constitutional right to freedom of expression, and (b) he just sought to draw attention to some unlawful, corruption-like phenomena in the judiciary which he himself experienced. He also referred to a case when a senior court official was detained and prosecuted. However, the service court rejected these arguments on the following grounds: (a) judges indeed have the right to freedom of expression, but this right is subjected to limitations determined by the constitution and statutory laws, which the judge was obviously aware of. According to the relevant laws, in case of experiencing undue influence, he should have made steps to prevent them and inform the court president, or reported the police. But he should not have turned to the public. Also, (b) his statements did not refer to some isolated, one-off anomalies in the judicial organization but rather suggested that the problems were general and large-scale at higher courts, among senior court officials being of a certain age. The criminal proceedings that were commenced against a judge did not substantiate the judge's claims.

**3. PROHIBITION OF POLITICAL ACTIVITY:** The service court held that both the Hungarian Constitution and the Act on the Status of Judges prohibit judges from party membership and engaging in political activity. The service court then defined the term political activity, covering not only conducts in relation to party politics but also "publicly expressing an opinion on national and local state of affairs", "participating in political events and demonstrations", and "making public statements on political matters". Judges cannot make their political opinions available to the outside world. The aim is to protect the independence and impartiality of the judge and to maintain the neutrality of the judicial branch. The service court stressed that expressing a political opinion is prohibited for judges, irrespective of the value, the soundness and the acceptance of a given opinion. Then, it held that the impugned publications connected all negative developments, persons and laws to a particular political system and ideology. This was reinforced by the repeated reference to the Kádár era, to post-1989 socialist governments (the Horn and Gyurcsány governments) and by the regular reference to the adjectives "Kádárist", neo-Kádárist, communist and socialist regarding judges and certain behaviours. The publications revealed the judge's political ideology and how he characterized his colleagues in political terms. After all, he suggested the need for a political cleansing within the judiciary. Therefore, the judge's conduct violated the prohibition of political activity. Finally, the court had to decide on the sanction for the breach of several duties. The court assessed the severity and the consequences of the misconduct and the degree of culpability. It stressed that the judge violated several standards of judicial conduct; the infringements consisted of a large number of actions which were carried out before a large audience, and they were capable of undermining the confidence in the judiciary as a whole and in high courts in particular. Consequently, the service court inflicted the most severe sanction on the judge and initiated his dismissal from judicial office. The judge challenged the decision before the

second-instance service court on the grounds that his writings did not qualify as political activity. As a result, he did not contest the findings of the first-instance court regarding the violation of the rules on making statements and refraining from undermining public confidence in the judiciary. The appeal court noted the importance of the neutrality of the judicial branch, which is reflected in many provisions of the Act on the Status of Judges. It argued that judges expressing professional criticism of their peers are not allowed to characterize their colleagues in political terms. However, the impugned statements could have prompted others to draw political consequences from them. Furthermore, the statements were made at the time when the government's decision to force judges into retirement at the age of 62 sparked a heated debate, so the judge's writings could be seen as a justification for these measures. Consequently, the appeal court upheld the decision.

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#### Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

In confirming the decision of the first instance service court, the appellate service court referred to the decision of the Hungarian Constitutional Court [Decision 96/2008 (VII. 3.) AB], which states that the freedom of expression can be restricted in the interest of achieving a constitutional goal. In this case, the goal is to preserve public trust in the functioning of the courts.

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#### Strategic use of judicial interaction technique (purpose aimed by the national court)

The court merely supported the fundamental rights aspects in its reasoning by referring to the Constitutional Court, which is held by the judiciary as the primary interpreter of constitutional norms.

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#### Impact on Legislation / Policy

The judge challenged the disciplinary decision before the Constitutional Court and the ECHR. In these cases, the judge was represented by a Hungarian Human Rights NGO, whose strategic litigation objective was to challenge the regulation and jurisprudence on judges' freedom of expression. After the Constitutional Court, based on procedural reasons, quashed the disciplinary decision and remitted the case to the service court [Decision 21/2014 (VII. 15.) AB], the ECHR rejected the complaint, finding it premature and therefore inadmissible under Article 10 (Ravasz v. Hungary, Application no. 64239/12).

According to the submissions, commenting on the cases in which the judge participated as a plaintiff does not fall under the prohibition of making public statements on court cases. Extending the prohibition to such situations would deprive the judges as a party of a case of possibility of publicly disclosing infringements in court proceedings, that other parties can use.

The applicant argued that the service court restricted his freedom of expression based on the content of the statements only because they were critical of the judiciary.

The applicant also stated that the prohibition on political activity relates only to disclosing party politics preferences but cannot be extended to exclude making public statements on public affairs.

The complainant notes that a public letter protesting against the forced early retirement of the judges did not raise the question of the responsibility of the court executives who had signed it. Consequently, his statements on the same issue cannot serve as grounds for disciplinary proceedings. The purpose of initiating disciplinary proceedings was to silence a judge who expressed an opinion contrary to those of the court executives.

Furthermore, court executives as public figures must also bear harsh criticism.

The applicant argued that his negative opinion of the judiciary was based on facts that could be proved, so it should have been protected.

Also, he had to turn to the public because his initiatives to have court executives deal with the

problems were rejected. Finally, he also argued that his removal was not a proportionate sanction, and it could deter other judges from expressing any criticism about the judiciary.

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

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[\(Link to\) full text](#)

Disciplinary decisions are not publicly available

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